

The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Saint-Gobain Performance Plastics Corp.
750 East Swedesford Road
Valley Forge, PA 19482

RE: Merrimack, New Hampshire
AFS #3301100165

ADMINISTRATIVE ORDER
BY CONSENT
NO. ARD 06-006
(Sta.S)

A. INTRODUCTION

This Administrative Order by Consent is issued by the Department of Environmental Services, Air Resources Division to, and with the consent of, Saint-Gobain Performance Plastics Corporation, pursuant to RSA 125-C:15. This Administrative Order by Consent is effective upon signature by all parties.

B. PARTIES

1. The Department of Environmental Services, Air Resources Division ("DES"), is a duly-constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.
2. Saint-Gobain Performance Plastics Corporation ("Saint-Gobain") is a corporation registered to do business in New Hampshire, having a mailing address of 750 East Swedesford Road, Valley Forge, PA 19482.

C. STATEMENTS OF FACTS AND LAW

1. RSA 125-C authorizes DES to regulate sources of air pollution in New Hampshire. RSA 125-C:4 authorizes the Commissioner of DES to adopt rules relative to the prevention, control, abatement, and limitation of air pollution in New Hampshire. Pursuant to this authority, the Commissioner has adopted NH Admin. Rules Env-A 100 *et seq.*
2. RSA 125-I authorizes DES to promulgate a list of regulated toxic air pollutants ("RTAPs") and to establish hourly and annual ambient air limits ("AALs") for each RTAP. Pursuant to this authority, the Commissioner has adopted Env-A 1400, *Regulated Toxic Air Pollutants*.
3. Saint-Gobain operates a facility in Merrimack, NH, that manufactures polytetrafluoroethylene ("PTFE") coated fiberglass and PTFE films for a variety of chemical and weather-resistant applications. After a fabric is coated, it is passed through a heating tower where the coating is sintered onto the fabric.
4. Certain coatings used by Saint-Gobain contain ammonium perfluorooctanoate ("APFO"), which is an RTAP. APFO, CAS # 3825-26-1, is also known as perfluorooctanoic acid

("PFOA"), a synthetic chemical that does not occur naturally in the environment and which is used to make fluoropolymers.

5. On October 13, 2004, Saint-Gobain met with DES to discuss the use of dispersions containing APFO at Saint-Gobain's facility. New analytical methods had been developed, allowing smaller amounts of APFO to be detected. Prior testing had shown no detectable amounts of APFO to be present. As specified in Env-A 1450.01, the 24-hour AAL for APFO is 0.050 microgram per cubic meter (" $\mu\text{g}/\text{m}^3$ "), and the annual AAL for APFO is $0.024 \mu\text{g}/\text{m}^3$. Modeling done by Saint-Gobain predicted that worst case uncontrolled emissions of APFO from the Merrimack facility exceeded these AALs.

6. Saint-Gobain contracted with an equipment supplier to evaluate a pilot scale wet scrubber filtration system, which was installed in December of 2004 and operated during the first quarter of calendar year 2005. In March of 2005, Saint-Gobain formed a team to expedite the transition to use of fluoropolymers with lower levels of APFO. Equipment trials were held that summer, and another meeting was held on July 12, 2005, to update DES on the testing.

7. On November 29, 2005, Saint-Gobain met with DES and presented options and an associated timeline for reducing APFO emissions. Specifically, Saint-Gobain proposed that it would lower the emissions of APFO by using fluoropolymer coatings that contain less APFO. Saint-Gobain reported that the fluoropolymers manufacturing group had agreed with EPA to reduce the APFO in fluoropolymers by 90% by the end of 2006, 95% by 2010, and to work to eliminate APFO by 2015.

8. After the November 29, 2005 meeting, DES modeled APFO emissions from Saint-Gobain's Merrimack facility and determined that coating dispersions containing 75 parts per million APFO will allow Saint-Gobain to comply with the AALs for APFO.

D. ALLEGATION

1. DES alleges that Saint-Gobain has violated Env-A 1405.01 by failing to consistently demonstrate compliance with the AALs for APFO.

E. ORDER

Based on the above findings, DES hereby orders Saint-Gobain, and Saint-Gobain agrees, as follows:

1. By **July 15, 2006**, Saint-Gobain shall have qualified low APFO dispersions (coating dispersions that contain no more than 75 parts per million of APFO ("APFO Lite")) for use in products that make up 50% of the production volume of coating dispersions used at the facility.

2. By **December 31, 2006**, Saint-Gobain shall have qualified APFO Lite for use in products that make up 100% of the production volume of coating dispersions used at its facility and be in compliance with the AALs for APFO as specified in Env-A 1450.01.

3. Saint-Gobain shall prepare and submit to DES monthly progress reports until compliance has been achieved. Saint-Gobain shall explain in each report the progress made toward compliance that month and note any issues that will potentially affect the schedule for compliance. Saint-Gobain shall explain how every issue will be addressed and estimate the length of any potential delays. The first progress report shall be due on or before **July 31, 2006**, reporting on progress made in the months of May and June, 2006. Each monthly progress report thereafter shall be due on or before the 15th of the following month.
4. Compliance with the AALs for APFO shall be determined by stack testing conducted by Saint-Gobain on or before **April 30, 2007**, in accordance with Env-A 800 and approved by DES.
5. The stack test report shall be submitted to DES on or before **July 31, 2007**.
6. Send correspondence and other submissions made in connection with this Administrative Order by Consent, to DES as follows:

Barbara Hoffman
Enforcement Section Supervisor
DES Air Resources Division
P.O. Box 95
Concord, NH 03302-0095
Fax: (603) 271-7053
e-mail: bhoffman@des.state.nh.us

F. STIPULATED PENALTIES

1. Saint-Gobain agrees to pay a stipulated penalty of \$50 per day for failure to meet the deadlines specified in paragraphs E.1 through E.5. DES may, in its discretion, waive payment of stipulated penalties if Saint-Gobain demonstrates to DES's satisfaction that a specific deadline cannot be met for reasons beyond Saint-Gobain's control, which reason shall not include financial inability.
2. If stipulated penalties become due, payment shall be by certified check made payable to "Treasurer, State of New Hampshire" and mailed to DES Legal Unit, Attn: Michael Sclafani, PO Box 95, Concord, NH 03302-0095, within 15 days of receipt of notice from DES that payment is required.


G. CONSENT AND WAIVER OF APPEAL

1. By execution of this Administrative Order by Consent, Saint-Gobain agrees that this Order shall apply to and be binding upon Saint-Gobain, its officers, directors, successors and assigns, and agrees that this Order may be entered and enforced by a court of competent jurisdiction.
2. By execution of this Administrative Order by Consent, Saint-Gobain waives any right to appeal this Administrative Order by Consent provided by statute, rule, or common law, including without limitation the right to appeal to the Air Resources Council, and waives any right to object to the entry and enforcement of this Order by a court of competent jurisdiction.

3. By execution of this Administrative Order by Consent, Saint-Gobain waives any right to a hearing on or appeal of the stipulated penalties specified in section F provided by statute, rule, or common law, and waives any right to object to the fine(s) in any collection action initiated by the State due to non-payment of the fine(s) by Saint-Gobain, except as noted in paragraph G.4, below.


4. In any action by the State to enforce the deadlines established in this Order, Saint-Gobain may raise as a defense to such action that the delay was caused by circumstances beyond Saint-Gobain's control, which circumstances shall not include Saint-Gobain's financial inability to perform the obligations set forth in this Order. The parties may agree in writing to extend the deadlines set forth herein to the extent that delays are caused by circumstances beyond Saint-Gobain's control.

Saint-Gobain Performance Plastics Corporation


By: _____
Duly Authorized

7/31/06
Date

NH Department of Environmental Services


Robert R. Scott, Director
Air Resources Division

7 August, 2006
Date


Michael P. Nolin, Commissioner

08 07 06
Date

cc: R. Kurowski, EPA Region I
J. Patterson, NH AGO - EPB
G. Hamel, DES Legal Unit Administrator
Public Information Officer, DES PIP Office
Timothy J. Tieperman, Town Manager of Merrimack
File AFS #3301100165